

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

ARCHIE M. MAXEY

PLAINTIFF

vs.

Civil Action No. 3:95cv006-D-A

GENERAL MOTORS CORPORATION

DEFENDANT

MEMORANDUM OPINION

By order dated September 19, 1996, United States Magistrate Judge S. Allan Alexander denied the defendant's motion for a protective order to prevent the disclosure in discovery of internal documents related to an entity known as the "Ad Hoc Passive Restraint Committee." Maxey v. General Motors Corp., Civil Action No. 3:95cv006-D-A (N.D. Miss. Sep. 19, 1996) (Alexander, M.J.) (Order Denying Motion for Protective Order). In denying the motion, Magistrate Judge Alexander ordered that the defendant General Motors "shall produce forthwith to plaintiff the documents at issue." Aggrieved with the decision of the Magistrate Judge, General Motors presented to this court objections to the Magistrate Judge's order. This court, upon consideration of the objections, declined to disturb the Magistrate Judge's decision. Maxey v. General Motors Corp., 1996 WL 692222, \*1 (N.D. Miss. Nov. 15, 1996) (Civil Action No. 3:95cv006-D-A) (Davidson, J.) (Memorandum Opinion and Order). General Motors then requested that this court reconsider its ruling of November 15, or in the alternative, grant the certification of an interlocutory appeal of that decision pursuant to 28 U.S.C. § 1292(b). This court denied reconsideration and also denied the request for alternative relief. Maxey v. General Motors Corp., 1996 WL 737537, \*1 (N.D. Miss. Dec. 16, 1996) (Civil Action No. 3:95cv006-D-A) (Davidson, J.) (Memorandum Opinion and Order).

As this court noted in its December 12 Memorandum Opinion, this court's denial of certification pursuant to 28 U.S.C. § 1292(b) was unappealable. See, e.g., In re Air Crash Disaster, 821 F.2d 1147, 1167 (5<sup>th</sup> Cir. 1987) ("The decision to certify an interlocutory appeal pursuant to section 1292(b) is within the discretion of the trial court and unappealable.") (citing In re McClelland Engineers, Inc., 742 F.2d 837, 839 (5<sup>th</sup> Cir. 1984), cert. denied, 469 U.S. 1228, 105 S.Ct. 1228, 84 L.Ed.2d 366 (1985)). Therefore, General Motors instead sought other relief which was available to it. On December 19, 1996, GM petitioned the Fifth Circuit Court of Appeals for a Writ of Mandamus to be issued to this court:

vacating the trial court's order requiring production of documents over GM's claims of privilege and directing it to rule on the substantive merits of GM's privilege claims.

General Motors additionally petitions . . . for a limited writ of mandamus directing the District Court to stay its November 18 order pending resolution of this mandamus petition.

General Motors' Petition for Writ of Mandamus, p. 24. The Fifth Circuit denied the petition on January 6, 1996. Maxey v. General Motors, No. 96-60861 (5<sup>th</sup> Cir. Jan. 6, 1997) (Order Denying Petition for Writ of Mandamus). To the present extent of the court's knowledge, General Motors has not yet complied with Magistrate Judge Alexander's order of September 15.

## II. The present state of affairs

Even in light of all of the above, Magistrate Judge Alexander's September 19 order remains in force and the defendant General Motors must still "produce forthwith to plaintiff the documents at issue." Neither this court nor the Fifth Circuit Court of Appeals has stayed that ruling. In light of the facts of this case and of the Fifth Circuit's recent denial of General Motor's petition for a writ of mandamus, the court shall provide GM with another opportunity to produce these documents. The defendant shall comply with the September 19 order on or before 12:00

p.m. on Friday, January 17, 1997.

In the event that General Motors fails to comply with today's directive from the court, the undersigned shall fashion an appropriate remedy. This court has already been required to repeatedly sanction General Motors throughout this litigation for its conduct. E.g., Maxey, Civil Action No. 3:95cv006-D-A (N.D. Miss. Apr. 16, 1996) (Order imposing sanctions against GM); (N.D. Miss. Jul. 18, 1996) (Order imposing sanctions against GM); (N.D. Miss. Nov. 11, 1996) (Order imposing sanctions against GM). Thus far, the imposition of lesser monetary sanctions appears to be ineffective. In light of General Motors' net worth, a more proportionate monetary sanction may be required. Of course, the simple imposition of monetary sanctions is not this court's only option. This court may incarcerate the defendant's corporate representatives or its counsel for civil contempt, strike parts of the defendant's pleadings in this cause or even enter judgment against it on the plaintiff's claims. Should GM fail to comply with this court's orders and the undersigned determine that the imposition of sanctions are appropriate, the undersigned will have no reservations in imposing whatever sanction or combination of sanctions that are required. Likewise, this court will have little patience for incomplete compliance with the court's orders. Any failure on the part of General Motors to fully comply with this production requirement will also subject it and its counsel to scrutiny for sanctions.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of January 1997.

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United States District Judge

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ORDER

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) The defendant General Motors shall comply with the order of United States Magistrate Judge S. Allan Alexander dated September 19, 1996 which directed it to produce certain documents to the plaintiff in this cause. General Motors shall produce those documents and deliver them to the offices of plaintiff's counsel no later than 12:00 p.m. noon on January 17, 1997.

2) Should the defendant General Motors fail to comply with this order, counsel for the plaintiff shall notify the court of the failure. Upon any such notification by the plaintiff, the undersigned shall set a date for a hearing to give the defendant an opportunity to show cause why it and its counsel should not be held in contempt for the wilfull violation of a court order, or why other sanctions should not be imposed against it.

SO ORDERED, this the \_\_\_\_ day of April 2001.

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United States District Judge